

Department of Education

3452.247-70

(End of clause)

3452.242-73 Accessibility of meetings, conferences, and seminars to persons with disabilities.

As prescribed in 3442.7101(b), insert the following clause in all solicitations and contracts:

ACCESSIBILITY OF MEETINGS, CONFERENCES, AND SEMINARS TO PERSONS WITH DISABILITIES (AUG 1987)

The contractor shall assure that any meeting, conference, or seminar held pursuant to the contract will meet all applicable standards for accessibility to persons with disabilities pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and any implementing regulations of the Department.

(End of clause)

3452.243-70 Key personnel.

As prescribed in 3443.106(b), insert the following clause in all solicitations and resultant cost-reimbursement contracts:

KEY PERSONNEL (AUG 1987)

The personnel designated as key personnel in this contract are considered to be essential to the work being performed hereunder. Prior to diverting any of the specified indi-

viduals to other programs, or otherwise substituting any other personnel for specified personnel, the contractor shall notify the contracting officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the contract effort. No diversion or substitution shall be made by the contractor without the written consent of the contracting officer; *provided*, that the contracting officer may ratify a diversion or substitution in writing and that ratification shall constitute the consent of the contracting officer required by this clause. The contract shall be modified to reflect that addition or deletion personnel.

(End of clause)

3452.247-70 Foreign travel.

As prescribed in 3447.7000, insert the following clause in all solicitations and resultant cost-reimbursement contracts:

FOREIGN TRAVEL (AUG 1987)

Foreign travel shall not be undertaken without the prior written approval of the contracting officer. As used in this clause, "foreign travel" means travel outside the fifty States comprising the United States, the District of Columbia, and Canada.

(End of clause)

CHAPTER 51—DEPARTMENT OF THE ARMY ACQUISITION REGULATIONS

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PART 5108—REQUIRED SOURCES OF SUPPLIES AND SERVICES

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35 and DOD FAR Supplement 201.301.

5108.070 Definitions.

As used in this section:

Memorandum of Understanding Planned Producer means an industrial firm which has indicated its willingness to produce specified military items in a declared national emergency by completing a Memorandum of Understanding with an accompanying Industrial Preparedness Program Production Capacity Survey (DD Form 1519 TEST). The firm is eligible to be solicited for all buys of the item(s) over \$25,000 excluding acquisitions for which competition is restricted to the Restricted Specified Base or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

Limited Fee Planned Producer means an industrial firm which is contractually bound by inclusion of AFARS 5152.208-9001 in their contract to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency or in the event of a declared national emergency or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over \$25,000 except acquisitions for which competition is restricted to the Restricted Specified Base in accordance with an approved Justification and Approval.

Restricted Specified Base Planned Producer means an industrial firm which is contractually bound to maintain production capacity for a negotiated length of time, to conduct subcontractor planning, and to produce specified military items in the event of a declared national emergency, or contingencies short of a declared national emergency. The firm is eligible to be solicited for all buys of the item(s) over \$25,000.

(g)(1)(i) Solicitation of Memorandum of Understanding Planned Producers in all acquisitions over \$25,000 which are

for items for which they have been designated as a Memorandum of Understanding Planned Producer except those restricted to the Restricted Specified Base Planned Producers or Limited Fee Planned Producers in accordance with an approved Justification and Approval.

(ii) Solicitation of Limited Fee Planned Producers in all acquisitions over \$25,000 which are for items for which they have been designated as a Limited Fee Planned Producer, except those restricted to the Restricted Specified Base.

(iii) Solicitation of Restricted Specified Base Planned Producers in all acquisitions over \$25,000 which are for items for which they have been designated as a Restricted Specified Base Planned Producer.

(g)(4) The clause at 5152.208-9001 is to be used for all contracted planning efforts.

[54 FR 38682, Sept. 20, 1989]

PART 5119—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 5119.10—Small Business Competitiveness Demonstration Program

Sec.

5119.1001 General.

5119.1002 Definitions.

5119.1003 Purpose.

5119.1004 Participating agencies.

5119.1005 Applicability.

5119.1070 Procedures.

5119.1070-2 Emerging small business set-aside.

5119.1070-3 Identification and reporting.

5119.1071 Solicitation provisions and contract clauses.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.301.

SOURCE: 54 FR 15410, Apr. 18, 1989, unless otherwise noted.

Subpart 5119.10—Small Business Competitiveness Demonstration Program

5119.1001 General.

This subpart implements Pub. L. 100-656, section 722, "Expanding Small Business Participation in Dredging"

5119.1002

(the Dredging Program). The Program will be conducted through 30 September 1992.

5119.1002 Definitions.

(S-90) "Emerging Small Business Reserve Amount" (ESBRA) means the dollar threshold for contracting opportunities in dredging, below which competition shall be conducted exclusively among emerging small business concerns. This amount is set forth in 5119.1070-2(a)(S-90).

5119.1003 Purpose.

(c)(S-90) The purpose of the Dredging Program is to—

(i) Expand small business and emerging small businesses (ESB) participation in contracting opportunities for dredging through restricted competition.

(ii) Demonstrate the existence of a sufficient number of small businesses and ESBs which meet the current size standard for Standard Industrial Code (SIC) Code 1629 (Dredging and Surface Cleanup Activities) as an indicator of the adequacy of the current size standard.

5119.1004 Participating agencies.

Participation in this Dredging Program is limited to the Department of the Army, Corps of Engineers.

5119.1005 Applicability.

(S-90) The program shall apply to solicitations issued by the Department of the Army Corps of Engineers buying activities for the procurement of dredging under SIC 1629 (Dredging and Surface Cleanup Activities), limited to Federal Procurement Data Systems (FPDS) codes Y216 and Z216. This includes both maintenance dredging and new start (new work) construction dredging. Dredging to be performed by Government forces utilizing the Federally owned fleet pursuant to 33 U.S.C. 622 is not subject to the program.

5119.1070 Procedures.

5119.1070-2 Emerging small business set-aside.

(a)(S-90) Solicitations for dredging shall be set-aside for exclusive competition among ESBs when the esti-

48 CFR Ch. 51 (10-1-10 Edition)

mated award value is equal to or less than the emerging small business reserve amount (ESBRA) of \$600,000. (Except that dredging acquisitions shall continue to be considered for placement under the 8(a) program (see FAR subpart 19.8) and for small disadvantaged business set-asides (see DFARS 219.502-72)). The ESBRA applies only to new awards. Modifications or follow-on awards to contracts having an initial award value in excess of the ESBRA are not subject to this requirement. The set-aside requirements in DFARS 219.1070-2 (a) and (b) for designated industry groups acquisitions valued at \$25,000 or less shall be complied with for all dredging program set-asides.

(S-90) The contracting office shall include the applicable SIC Code and dollar size standard in the synopsis of proposed procurement as published in the Commerce Business Daily (CBD), in the presolicitation notice (construction contract) SF 1417 when issued, and in the solicitation documents.

(S-91) The contracting officer shall consider use of the following initiatives to increase participation by small businesses and emerging small businesses:

(1) Specifying of contract requirements and contractual terms and conditions which are conducive to competition among small business and emerging small business concerns, consistent with the mission or program requirements of the Department of the Army, Corp of Engineers.

(2) Encouraging joint ventures, teaming agreements, and similar arrangements consistent with the Small Business Act (15 U.S.C. 637(d)) for the purpose of including small business concerns in contracting opportunities. However, no such joint venture shall exceed the applicable size standard.

(3) Making maximum use of subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act. Goals may be specified in solicitations stating minimum percentages of subcontracting.

5119.1070-3 Identification and reporting.

(b) Reporting shall be done in accordance with DFARS 204.6 designated industry group requirements. Block

Department of the Army

5145.302-3

B12A, DD Form 350, shall contain either the FPDS Code Y216 or Z216, as applicable, per 5119.1005 (S-90).

5119.1071 Solicitation provisions and contract clauses.

(a) DFARS provision 252.219-7012 shall be inserted in all solicitations issued under the Small Business Dredging Program (SIC 1629, limited to FPDS Service Codes Y216/Z216).

(b) DFARS clause 252.219-7013 shall be inserted in all solicitations and contracts set-aside for emerging small businesses in accordance with 5119.1070-2(a) (S-90).

PART 5145—GOVERNMENT PROPERTY

Sec.

5145.301 Definitions.

5145.302-3 Other contracts.

5145.303 Providing material.

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

SOURCE: 54 FR 39538, Sept. 27, 1989, unless otherwise noted.

5145.301 Definitions.

Other Government Property means all property, other than Special Use Property as defined below, which may be offered to a contractor for use in performance of installation support services contracts.

Special Use Property means property that is (a) "agency peculiar property", (b) necessary for mobilization requirements; or (c) property for which it has been determined that title should remain with the Government.

5145.302-3 Other contracts.

(S-90)(1) When it is determined that contractor use of existing Government facilities, other than special use property, in the performance of installation support services contracts, is in the best interest of the Government, the Government facilities will be offered to a contractor for use in the performance of the Government contract. Facilities provided to a contractor under this authority will not be replaced by the Government when they can no longer be used by the contractor. Nevertheless, it will be the contractor's respon-

sibility to continue performance in accordance with the terms of the contract.

(2)(i) New facilities shall not be purchased in order to provide them to contractors. Prior to offering existing facilities under this authority, a contracting officer shall make a written determination, based on the detailed justification provided by the approving officials and program/project manager, that such use is in the best interest of the Government. The written determination shall be kept in the contract file.

(ii) Existing facilities offered for contractor use will be offered to all bidders/offerors for their consideration in the preparation of their bids and offers. Bidders/offerors may choose to use any or all of the facilities offered.

(3) When it is determined that contractor use of special use property in the performance of installation support services contracts is in the best interest of the Government, such property will be provided. It will be accounted for and managed under the appropriate Government property clause. For example, FAR 52.245-2 for fixed-price contracts or FAR 52.245-5 for cost-reimbursement contracts and any appropriate provision from FAR 52.245-11, Facilities Use Clause.

(S-91) Required Government property clauses for other than facilities contracts.

(1) In addition to the clauses at FAR 52.245-2 and 52.245-19, the Contracting Officer shall insert the clause at 5152.245-9000, Government Property for Installation Support Services (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and Government property will be provided without being replaced by the Government.

(2) The Contracting Officer shall insert the clause at 5152.245-9001, Government Property for Installation Support Services (Cost-Reimbursement Contracts), in solicitations and contracts when a cost-reimbursement type contract is contemplated and the Government property will be provided without being replaced by the Government.

5145.303 Providing material.

(S-90) Existing Government material on hand or being used prior to conversion to contractor performance of commercial activities may be offered to contractors if it is determined to be in the best interest of the Government per FAR 45.303-1. If the material is to be provided without replacement by the Government, the solicitation must state that it will not be replaced. If it is determined that the Government will be responsible for replacement of any of the material, those items must be listed on a separate Technical Exhibit and the solicitation state that replacement will be by the Government. These items will be governed by the appropriate Government Property clause in the contract in accordance with FAR 52.245-2 for fixed-price and FAR 52.245-5 for cost-reimbursement type contracts.

PART 5152—SOLICITATIONS PROVIDED AND CONTRACT CLAUSES

Sec.

5152.208-9001 Industrial preparedness planning.

5152.245-9000 Government property for installation support services (fixed-price contracts).

5152.245-9001 Government property for installation support services (cost-reimbursement contracts).

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, and DOD FAR Supplement 201.301.

5152.208-9001 Industrial preparedness planning.

As prescribed at 5108-070(g)(4) insert the following clause in full text in contracts where the contractor is designated a Limited Fee Planned Producer.

INDUSTRIAL PREPAREDNESS PLANNING (XXX 1989) (DEV)

(a) The Government designates the contractor a Limited Fee Planned Producer (LFPP) for the item(s) listed in paragraph (e) of this clause. As an LFPP for the listed items, the contractor will be solicited for all acquisitions over \$25,000 which are for the item(s), excluding those for which competition is restricted to the Restricted Specified Base pursuant to an approved Justification

and Approval. The Government reserves the right to obtain the item(s) listed from sources other than the commercial marketplace, i.e. by assigning workload to a government-owned facility.

(b) The Contractor agrees to:

(i) Update the Production Capacity Survey DD Form 1519 TEST for each item biennially;

(ii) Accomplish subcontractor planning as required in paragraph (f) of this clause;

(iii) Permit Government personnel access to records, manufacturing process data, plants and facilities in order to verify data on the Production Capacity Survey DD Form 1519 TEST.

(iv) Maintain the surge/mobilization capacity set forth in the Production Planning Schedules during active production of the item and for a period of (negotiated number) years after physical completion of this production contract.

(c) The Contractor is aware of the Government's dependence upon the Production Planning Schedules as a basis to take appropriate measures to ensure the adequacy of the United States Industrial Base. The Contractor also recognizes the Government's intention to convert Production Planning Schedule to contracts on a selective basis, as may be required to minimize materiel shortages during mobilization or to meet contingencies short of a declared national emergency. The Contractor agrees to accept contracts for the item(s) in accordance with the Production Planning Schedules. In the event mobilization or contingencies short of a declared national emergency occur after active production has ceased, and the allocated capacity is in use for the production of other item(s), the Contractor agrees to immediately discontinue production of such other item(s) if necessary to meet production schedules for the planned item(s). The Contractor further recognizes that it is the Government's intention to require that planned subcontractor support will be similarly converted to production subcontracts. Production delivery obligations under this clause are governed by Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*) (Defense Production Act) and as applicable are within the purview of the Defense Priorities and Allocation System.

(d) For the listed item(s), the Contractor certifies by signing this contract that the plant capacity required to support the mobilization quantity listed on the Production Capacity Survey DD Form 1519 TEST will be dedicated exclusively for the production of that item at mobilization. Furthermore, the Contractor certifies that this capacity is not shared by any other mobilization production requirements.

(e) This clause covers the item(s) listed below:

Department of the Army

| Item schedule No. | Item nomenclature (sample) |
|-------------------|----------------------------|
| M11111 | Fuze, Rocket MK987. |
| M22222 | Machine Gun, MK35. |

(f) Subcontractors, suppliers and vendors provide many of the components of military end items. The lack of critical components could be one of the major limitations of the United States' ability to support its Armed Forces warfighting capabilities. Therefore, the Government designated critical components and/or subassemblies in Block #27 of the attached Production Capacity Survey (DD Form 1519 TEST) are those for which the Contractor will conduct vertical planning if not produced in-house. Additional critical components and/or subassemblies may be identified by the Contractor in block #21 of the attached Production Capacity Survey (DD Form 1519 TEST). Foreign producers (other than Canada) will not be considered as a source of supply for critical components. Mandatory vertical (subcontractor) planning will be accomplished by the ASPPO and the Contractor for all critical components identified on the Production Capacity Survey, (DD Form 1519 TEST), by using a sub-tier Production Capacity Survey (DD Form 1519 TEST). The Contractor agrees to coordinate completion of the DD Form 1519 TEST and finalize prime and subcontractor planning with the Armed Services Production Planning Officer (ASPPO) having cognizance over the prime contractor's facility.

(g) After completion of active production of the item(s), the Government will annually, or as changes occur but not more than annually, furnish the Contractor updated technical data for the item. The Contractor agrees to review the technical data and to report to the Government within 60 days of receipt of the data, the impact of technical changes, if any, to the current Production Planning Schedules at no additional cost to the Government.

(h) Retention by the Contractor of the surge/mobilization capacity set forth in the Production Planning Schedules after completion of active production of the planned item(s) will not necessarily require that the Contractor maintain such capacity in idle status. Contractor utilization of capacity allocated for planned production for production of other non-planned items is consistent with the intent of any postproduction provisions of this contract, provided no degradation of surge/mobility capacity occurs as a result, and provided that the approval of the Contracting Officer with property cognizance is obtained for the use of any Government-owned property.

[54 FR 38683, Sept. 20, 1989]

5152.245-9001

5152.245-9000 Government property for installation support services (fixed-price contracts).

As prescribed in 5145.302-3(91), insert the following:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (FIXED-PRICE CONTRACTS) (OCT 1989) (DEV)

The Government property listed at Technical Exhibit ____ is provided "as is" to the contractor for use in the performance of this contract. This property may be used by the Contractor until the Contractor no longer desires to use it for contract performance or the Contracting Officer withdraws it from use under this contract in accordance with FAR 52.245-2(b). The Contractor will comply with instructions from the Contracting Officer relative to disposition of the property. No equitable adjustment or other claim will be payable to the Contractor based upon the condition or availability of the property, except as provided in FAR 52.245-19. The Contractor remains responsible for performance of the required services under this contract regardless of the length of time which the property provided hereunder remains operational. Property provided by or obtained by the Contractor under this contract remains Contractor property. Except as provided herein, the property listed at Technical Exhibit ____ will be governed by FAR 52.245-2, Government Property (Fixed-Price Contracts), and FAR 52.245-19, Government Property Furnished "as is".

(End of clause)

[54 FR 39539, Sept. 27, 1989]

5152.245-9001 Government property for installation support services (cost-reimbursement contracts).

As prescribed in 5145.302-3(S-91), insert the following clause:

GOVERNMENT PROPERTY FOR INSTALLATION SUPPORT SERVICES (COST-REIMBURSEMENT CONTRACTS) (OCT 1989) (DEV)

(a) *Government-furnished property.* The Government property listed at Technical Exhibit ____ is provided to the contractor for use in the performance of this contract for installation support services. This property will be used, maintained and administered by the Contractor until it is no longer required by the Contractor. Cessation of such use of the property, and subsequent turn-in, must be approved by the Contracting Officer. The

Contracting Officer will provide the Contractor with appropriate disposition instructions. The Contractor will continue to perform following such disposition with Contractor-owned property. No equitable adjustment or claim will be payable resulting from turn-in or unsuitability for intended use of this property. No change to this contract is indicated by approval of turn-in of the property. No delay claim or performance delay will be allowed based on unsuitability of property or turn-in. The Contractor's proposal includes an estimate of the costs for providing its own property for the period following turn-in of Government property.

(b) *Changes in Government-furnished property.* The Contracting Officer may, by written notice, decrease the Government-furnished property or substitute other property for the property being used by the contractor. In the case of this withdrawal of property by the Contracting Officer, an equitable adjustment may be appropriate. Nevertheless, even in the case of such withdrawal, the Contractor is obligated to continue performance under this contract.

(c) *Title in Government Property.* (1) Title to the Property shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) of this clause shall pass to and vest in the Government upon completion of their installation in the property.

(2) Title to the property shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the property become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the property free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of any of the property.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government furnished premises, readily removable machinery, equipment and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations as used herein, means any alteration or improvement in the nature

of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the property.* The Contractor may use the property only at the installation location(s) specified in the schedule. Written approval of the Contracting Officer is required prior to moving the property to any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the property involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the property.* The Contractor shall notify the Contracting Officer in writing whenever any item of the property is no longer needed or usable for performing under this contract. The contracting officer will then make a decision as to disposition if agreement is reached with the Contractor that the property is no longer usable or suitable for its intended use.

(f) *Property Control.* The Contractor shall maintain property control procedures and records, and a system of identification of the property, in accordance with the provisions of FAR subpart 45.5 in effect on the date of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the property in accordance with sound industrial practice.

(2) No later than 45 days after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (g) (1) and (5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under paragraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires

maintenance in excess of the normal maintenance program. The Contracting Officer shall then make a determination whether to repair the facilities or whether the Contractor should provide contractor property while continuing to perform.

(5) The Contractor shall keep records of all work done on the property and shall give the Government reasonable opportunity to inspect such records. When property is disposed of under this contract, the Contractor shall deliver the related records to the Government, or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of property shall continue until the item is removed, abandoned, or disposed of in accordance with Contracting Officer's instructions.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times have access to the premises where any of the property is located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the property under this contract. Nevertheless, this provision applies only to injury arising out of use of property provided under this clause.

(j) *Representation and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any property. To the extent practical, the Contractor shall be allowed to inspect all the property to be furnished by the Government.

(2) If, however, the Contractor receives property in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer, and at Government expense, either return such item or otherwise dispose of it or effect repairs or modifications. If the determination is made by the Contracting Officer to require turn-in rather than repair of the property, then the Contractor will continue to perform the contract by using its own property, for which reimbursement will be made in accordance with applicable cost principles.

(k) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (k) (2) and (3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (f) of this clause.

(3)(i) If the Contractor fails to act as provided by paragraph (k)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or non-acceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this subparagraph (k)(6). However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (k) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the pro-

ceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(1) *Disposition of the facilities.* (1) The provisions of this paragraph shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor because the property is no longer suitable for intended use, no longer desired, or is withdrawn from use by the Government.

(2) The Contractor shall dispose of the property provided hereunder in accordance with guidance provided by the Contracting Officer.

(3) The Contracting Officer shall give disposition instructions within 60 days of agreement that the property should be returned to the Government.

(4) The Government may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated.

(5) When Government property is returned to the Government, upon termination of the contract relationship between Government and Contractor or when Government furnished property is replaced by Contractor property, the Contracting Officer may direct repair of Government property necessitated by the change from Government to Contractor property such as removal of fixtures. When Contractor property is removed from Government property at the end of contract performance, the Government property will be restored to its condition prior to installation of Contractor property in accordance with Contracting officer direction.

(End of clause)

[54 FR 39539, Sept. 27, 1989]